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Report : Mr. Jarnagin.

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IN SENATE OF THE UNITED STATES.

MARCH 17, 1846.

Submitted, and ordered to be printed.

Mr. JARNAGIN made the following

REPORT:

The Committee on Indian Affairs, to whom was referred the memorial of Preston Starritt and others, respectfully report :

In 1835-'6, the United States and the Cherokee people concluded a treaty, whereby the entire country, owned by the latter, east of the Mississippi river, was ceded; and in consideration therefor, various engagements were undertaken to be performed by the first contracting party.

The petitioning parties allege that the provisions and engagements agreed upon, under the several articles of that treaty, have not been fulfilled; and if this be correct, Congress, as matter of duty and right, should see that they are performed with the same punctilious regard as if they were engagements with a foreign power.

The Supreme Court of the United States has decided that an Indian people is not a foreign power, in judicial consideration and in parlance; yet the United States having entered into conventional arrangements with them, a strict moral obligation is imposed, that nothing promised shall be omitted to be performed. The highest obligation imposed on any people is to maintain strictly its treaty engagements; and if any difference shall be made, it should always be on the side and in favor of the weaker party.

This treaty, then, must and should be fulfilled, or the United States will be recreant to its solemn engagements; and to effect which, there is but a single mode—the one agreed upon by the contracting parties to the treaty.

In the seventeenth article are to be found the following words: "All claims arising under, or provided for by, the several articles of *this treaty*, shall be examined and adjudicated by *such* commissioners as shall be appointed by the President, by and with the advice and consent of the Senate; and their decision shall be final," &c.

Here is a tribunal specially authorized and directed to be created, with power to adjudicate as to all claims arising under or provided for by the treaty of 1835.

No other tribunal can act upon the settlement of these claims, because over them there is no jurisdiction, no control, save what the treaty authorizes; they cannot be settled except through the establishment of a board of commissioners, as is authorized by this seventeenth article of the treaty; and so long as any demand arising under it remains unsettled, or not acted upon,

the United States, pursuing a course of good faith, should fulfil its engagements.

There are many claims yet to be considered, arising under the severals of this treaty, and for their payment and satisfaction it is believed the appropriations made by Congress in 1837-'38 will be found adequate and sufficient. But at any rate, the appropriations of that year having been made equal to the requirements of the treaty, nothing more than was engaged can be asked for, or be at all needed. The sum to be acted on and disposed of yet, by the board, already, for nine years past, has been appropriated, and a considerable amount thereof remains on hand, applicable to the payment of outstanding and unsettled claims, when they shall be ascertained. But there is no mode whereby to ascertain them, except by creating a board of commissioners.

In this business the United States have no sort of interest, except that the appropriations heretofore made by Congress to carry out this treaty be faithfully applied, and their trust correctly discharged. No part of the amount remaining on hand, the balance, whatever it may be, is to undergo a *per capita* distribution amongst all the Indians. Heirs of the United States, pecuniarily, are in no wise interested or concerned in regard to the amount that has heretofore been appropriated for the purpose of the treaty. Their only object or purpose is to take care that they do not falter or fail in carrying into complete fulfilment their engagement to provide a proper tribunal to hear and decide all the cases about and concerning which the faith of the United States is pledged.

This is not a new subject, now for the first time to be considered. It came before the Senate in 1842, on a resolution submitted by Senator Calhoun, proposing the appointment of three commissioners for the purpose of settling these Cherokee demands, and on the 21th of March Senator Calhoun made report that "there are important claims arising under the treaty which were not adjusted, and it is believed that justice to the claimants requires that those claims should be examined, and, if found just, be paid. But the committee are of opinion that the President has full power to settle the commission, *at his pleasure*, until its objects (the provisions of the treaty) are fully carried into effect."

Upon this report, expressive of the sense of the Senate, being made, an Executive nomination and the Senate approved a board of commissioners, yet, as it appears, many claimants still remain who have not been heard, and whose claims remain undecided. This board was limited in duration to one year, but, owing to the dispersed condition of the claimants, its business could not be ended in the time allowed.

Under all the presented circumstances, the committee are of opinion that the stipulations of the treaty ought to be carried out in good faith; and without intending to interfere with the discretion of the Executive, report that, to carry into complete effect the stipulations contained in the Cherokee treaty of 1835-'6, a board of commissioners ought to be appointed, that the good and impartial justice may be done, and its obligations and engagements in good faith be carried out, in behalf of the Cherokee treaty-making parties, which, reposing their confidence in the United States, should not be disappointed in their just expectations.